Prudential Clear Water Realty
246 Craven Street
New Bern, NC 28560
Phone: 252-638-5063
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EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT

This EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT ("Agreement") is entered into (Date) _____, between

as Seller(s) ("Seller") of the property described below (the "Property"), and _____ as Listing Firm ("Firm"). The individual agent who signs this Agreement shall, on behalf of the Firm, be primarily responsible for ensuring that the Firm's duties hereunder are fulfilled; however, it is understood and agreed that other agents of the Firm may be assigned to fulfill such duties if deemed appropriate by the Firm. For purposes of this Agreement, the term "Firm," as the context may require, shall be deemed to include the individual agent who signs this Agreement and any other agents of the Firm.

1. **REAL PROPERTY.** The real property that is the subject of this Agreement is located in _____ County, North Carolina, and is known more particularly and described as:

Address: Street _____

City _____ Zip _____

Legal Description

Subdivision Name: _____

Plat Reference: Lot _____, Block or Section _____ as shown on Plat Book or Slide _____ at Page(s) _____ (Property acquired by Seller in Deed Book _____ at Page _____).

2. **FIXTURES.** The following items, if any, and if owned by the Seller, are included free of liens: any built-in appliances, light fixtures, ceiling fans, attached floor coverings, blinds, shades, drapery rods and curtain rods, brackets and all related hardware, window and door screens, storm windows, combination doors, awnings, antennas, satellite dishes and receivers, burglar/fire/smoke alarms, pool and spa equipment, solar energy systems, attached fireplace screens, gas logs, fireplace inserts, electric garage door openers with controls, outdoor plants and trees (other than in movable containers), basketball goals, storage sheds, mailboxes, wall and/or door mirrors, attached propane gas tank, invisible fencing including all related equipment, lawn irrigation systems and all related equipment, water softener/conditioner and filter equipment, and any other items attached or affixed to the Property, EXCEPT the following items:

3. **PERSONAL PROPERTY.** The following personal property is included in the listing price:

4. **HOME WARRANTY.** Seller ☐ agrees ☐ does not agree to obtain and pay for at closing a one year home warranty for the Property at a cost not to exceed $ _____. If Seller agrees to obtain and pay for a home warranty at any time, Firm hereby discloses that a fee of _____ will be offered to Firm by the person or entity through or from which any home warranty is obtained as compensation to Firm for its assistance in obtaining the home warranty, and Seller hereby consents to Firm's receipt of such fee.

5. **HOME INSPECTION**. Seller ☐ agrees ☐ does not agree to obtain and pay for a home inspection by a licensed NC Home Inspector within _____ days after the execution of this agreement.

☐ Seller acknowledges receipt of a copy of *Questions and Answers on: Home Inspections* by the NC Real Estate Commission.

North Carolina Association of REALTORS®, Inc.
REALTOR®
EQUAL HOUSING OPPORTUNITY
STANDARD FORM 101
Revised 7/2009
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6. **LISTING PRICE.** Seller lists the Property at a price of $ _____ on the following terms: ☐ Cash ☐ Loan Assumption ☐ Conventional ☐ FHA ☐ VA ☐ Seller Financing ☐ Other _____ . Seller agrees to sell the Property for the Listing Price or for any other price or on any other terms acceptable to Seller.

7. **TERM.** In consideration of the Seller agreeing to list the Property for sale and in further consideration of Firm's services and efforts to find a buyer, Firm is hereby granted the exclusive right to sell the Property from (Date) _____ until midnight, (Date) _____ .

8. **FIRM'S COMPENSATION.** Seller agrees to pay Firm a total fee of _____ % of the gross sales price of the Property, OR

, which shall include the amount of any compensation paid by Firm as set forth in paragraph 9 below to any other real estate firm, including individual agents and sole proprietors ("Cooperating Real Estate Firm). Such fee shall be deemed earned under any of the following circumstances:

(a) If a ready, willing and able buyer is procured by Firm, a Cooperating Real Estate Firm, the Seller, or anyone else during the Term of this Agreement at the price and on the terms set forth herein, or at any price and upon any terms acceptable to the Seller;

(b) If the Property is sold, exchanged, conveyed or transferred, or the Seller agrees to sell, exchange, convey or transfer the Property at any price and upon any terms whatsoever, during the Term of this Agreement or any renewal hereof;

(c) If, within _____ days after expiration of the Term of this Agreement (the "Protection Period"), Seller either directly or indirectly sells, exchanges, conveys or transfers, or agrees to sell, exchange, convey or transfer the Property upon any terms whatsoever, to any person with whom Seller, Firm, or any Cooperating Real Estate Firm communicated regarding the Property during the Term of this Agreement or any renewal hereof, provided the names of such persons are delivered or postmarked to the Seller within 15 days from date of expiration. HOWEVER, Seller shall NOT be obligated to pay such fee if a valid listing agreement is entered into between Seller and another real estate broker and the Property is sold, exchanged, conveyed or transferred during such Protection Period.

Once earned as set forth above, Firm's compensation will be due and payable at the earlier of: (i) closing on the Property; (ii) the Seller's failure to sell the Property (including but not limited to the Seller's refusal to sign an offer to purchase the Property at the price and terms stated herein or on other terms acceptable to the Seller, the Seller's default on an executed sales contract for the Property, or the Seller's agreement with a buyer to unreasonably modify or cancel an executed sales contract for the Property); or (iii) Seller's breach of this Agreement.

If Seller is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Seller at the time of the transfer.

If additional compensation, incentive, bonus, rebate and/or other valuable consideration ("Additional Compensation") is offered to the Firm from any other party or person in connection with a sale of the Property, Seller will permit Firm to receive it in addition to the compensation set forth above. Firm shall timely disclose the promise or expectation of receiving any such Additional Compensation and confirm the disclosure in writing before Seller makes or accepts an offer to sell.) (Note: NCAR Form #770 may be used to confirm the disclosure of any such Additional Compensation)

If Firm is the prevailing party in any legal proceeding brought by Firm against Seller to recover any or all of the fee set forth above, Firm shall be entitled to recover from Seller reasonable attorney fees and court costs incurred by Firm in connection with the proceeding.

9. **COOPERATION WITH/COMPENSATION TO OTHER FIRMS.** Firm has advised Seller of Firm's company policies regarding cooperation and the amount(s) of any compensation that will be offered to other brokers, including but not limited to, seller subagents, buyer agents or both, brokers who do or do not participate in a listing service and brokers who are or are not REALTORS®. Seller authorizes Firm to*(Check ALL applicable authorizations):*

Individual agent initials _____ Seller initials _____ _____

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- ☐ Cooperate with subagents representing the Seller and offer them the following compensation: _____ % of the gross sales price or $ _____ ; and/or,
- ☐ Cooperate with buyer agents representing the buyer and offer them the following compensation: _____ % of the gross sales price or $ _____ ; and/or,
- ☐ Cooperate with and compensate other Cooperating Real Estate Firms according to the Firm's attached policy.

Firm will promptly notify Seller if compensation offered to a Cooperating Real Estate Firm is different from that set forth above. Agents with Cooperating Real Estate Firms must orally disclose the nature of their relationship with a buyer (subagent or buyer agent) to Firm at the time of initial contact with Firm, and confirm that relationship in writing no later than the time an offer to purchase is submitted for the Seller's consideration. Seller should be careful about disclosing confidential information because agents representing buyers must disclose all relevant information to their clients.

10. **FIRM'S DUTIES**. Firm agrees to provide Seller the benefit of Firm's knowledge, experience and advice in the marketing and sale of the Property. Seller understands that Firm makes no representation or guarantee as to the sale of the Property, but Firm agrees to use its best efforts in good faith to find a buyer who is ready, willing and able to purchase the property. In accordance with the REALTORS® Code of Ethics, Firm shall, with Seller's approval, in response to inquiries from buyers or Cooperating Real Estate Firms, disclose the existence of offers on the Property. Where Seller authorizes disclosure, Firm shall also disclose whether offers were obtained by the individual agent who signs this Agreement, another agent of the Firm, or by a Cooperating Real Estate Firm. Seller acknowledges that real estate brokers are prohibited by N.C. Real Estate Commission rule from disclosing the price or other material terms contained in a party's offer to purchase, sell, lease, rent or option real property to a competing party without the express authority of the party making the offer.

Seller acknowledges that Firm is required by law to disclose to potential purchasers of the Property all material facts pertaining to the Property about which the Firm knows or reasonably should know, and that REALTORS® have an ethical responsibility to treat all parties to the transaction honestly. Seller further acknowledges that Firm is being retained solely as a real estate professional, and understands that other professional service providers are available to render advice or services to Seller, including but not limited to an attorney, insurance agent, tax advisor, surveyor, structural engineer, home inspector, environmental consultant, architect, or contractor. Although Firm may provide Seller the names of providers who claim to perform such services, Seller understands that Firm cannot guarantee the quality of service or level of expertise of any such provider. Seller agrees to pay the full amount due for all services directly to the service provider whether or not the transaction closes. Seller also agrees to indemnify and hold Firm harmless from and against any and all liability, claim, loss, damage, suit, or expense that Firm may incur either as a result of Seller's selection and use of any such provider or Seller's election not to have one or more of such services performed.

THE AGENT (FIRM) SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

11. **Marketing:** Seller authoirzes Firm: *(Check ALL applicable sections):*

- ☐ Signs: To place "For Sale," "Under Contract," "Sale Pending," or other similar signs on the Property (where permitted by law and relevant covenants) and to remove other such signs.
- ☐ Lock/Key Boxes. To place a lock/key box on the Property.
- ☐ Open Houses. To conduct open houses of the Property at such times as Seller and Firm may subsequently agree.
- ☐ Listing Service. To submit pertinent information concerning the Property to any listing service of which Firm is a member or in which any of Firm's agents participate and to furnish to such listing service notice of all changes of information concerning the Property authorized in writing by Seller. Seller authorizes Firm, upon execution of a sales contract for the Property, to notify the listing service of the pending sale, and upon closing of the sale, to disseminate sales information, including sales price, to the listing service, appraisers and real estate brokers.
- ☐ Advertising Other Than On The Internet. To advertise the Property in non-Internet media, and to permit other firms to advertise the Property in non-Internet media to the extent and in such manner as Firm may decide.
- ☐ Internet Advertising. To display information about the Property on the Internet either directly or through a program of any listing service of which the Firm is a member or in which any of Firm's agents participate, and authorizes other firms who belong to any listing service of which the Firm is a member or in which any of

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Firm's agents participate to display information about the Property on the Internet in accordance with the listing service rules and regulations. *If Seller does not authorize Internet Advertising as set forth above, Seller MUST complete an opt-out form in accordance with listing service rules. (NOTE: NCAR Form #105 may be used for this purpose.)*

If Seller authorizes Internet Advertising as set forth above, Seller further authorizes the display of (*Check ALL applicable sections*):

- ☐ The address of the Property
- ☐ Automated estimates of the market value of the Property
- ☐ Third-party comments about the Property

Seller acknowledges and understands that while the marketing services selected above will facilitate the showing and sale of the Property, there are risks associated with allowing access to and disseminating information about the Property that are not within the reasonable control of the Firm, including but not limited to:

1. unauthorized use of a lock/key box,
2. control of visitors during or after a showing or an open house,
3. inappropriate use of information about the Property placed on the Internet or furnished to any listing service in which the Firm participates.

Seller therefore agrees to indemnify and hold harmless Firm from any damages, costs, attorneys' fees and other expenses as a result of any personal injury or property loss or damage to Seller or any other person not caused by Firm's negligence arising directly or indirectly out of any such marketing services.

12. **SELLER'S DUTIES.** Seller agrees to cooperate with Firm in the marketing and sale of the Property, including but not limited to:

(a) providing to Firm, in a timely manner, accurate information including but not limited to the Residential Property Disclosure Statement (unless exempt), and the Lead-Based Paint or Lead-Based Paint Hazard Addendum with respect to any residential dwelling built prior to 1978;

(b) making the Property available for showing (including working, existing utilities) at reasonable times and upon reasonable notice;

(c) providing Firm as soon as reasonably possible after the execution of this Agreement copies of restrictive covenants, if any, and copies of the bylaws, articles of incorporation, rules and regulations, and other governing documents of the owners' association and/or the subdivision, if applicable.

(d) immediately referring to Firm all inquiries or offers it may receive regarding the Property; showing the Property only by appointment made by or through Firm; and conducting all negotiations through Firm.

If the Property is sold during the period set forth herein, the Seller agrees to execute and deliver a GENERAL WARRANTY DEED conveying fee simple marketable title to the Property, including legal access to a public right of way, free of all encumbrances except ad valorem taxes for the current year, utility easements, rights-of-way, and unviolated restrictive covenants, if any, and those encumbrances that the buyer agrees to assume in the sales contract. Seller represents that the Seller has the right to convey the Property, and that there are currently no circumstances that would prohibit the Seller from conveying fee simple marketable title as set forth in the preceding sentence. except as follows *(insert N/A if not applicable)*:

(Note: If any sale of the Property may be a "short sale," consideration should be given to attaching NCAR form 104 as an addendum to this Agreement.)

Seller agrees to provide Firm, in a timely manner, sufficient information to enable Firm to compute Seller's net proceeds at Closing, including but not limited to, all mortgage and equity line payoffs, tax liens, judgments, mechanics' or materialmens' liens, or other outstanding liens on the Property.

- ☐ Seller acknowledges receipt of a sample copy of an Offer to Purchase And Contract for review purposes.
- ☐ Seller acknowledges receipt of a sample copy of a Professional Services Disclosure and Election form (form #760) for review purposes.

13. **FLOOD HAZARD DISCLOSURE/INSURANCE.** To the best of Seller's knowledge, the Property ☐ is ☐ is not located partly or entirely within a designated Special Flood Hazard Area. The Seller ☐ does ☐ does not currently maintain flood hazard insurance on the Property.

Individual agent initials _____ Seller initials _____ _____

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14. **SYNTHETIC STUCCO.** To the best of Seller's knowledge, the Property has not been clad previously (either in whole or in part) with an "exterior insulating and finishing system," commonly known as "EIFS" or "synthetic stucco", unless disclosed as follows: *(If the Seller does not wish to disclose, put "No Representation")*:

15. **OWNERS' ASSOCIATION.** There ☐ is ☐ is not an owners' association. If there is an owners' association, then it is recommended that the Seller provide to Firm a completed Form 2A12T (Owners' Association Disclosure and Addendum). The name, address and telephone number of the President of the owners' association or the Property Manager is:

_____

16. **TERMITE BOND.** There ☐ is ☐ is not a termite bond on the Property. If there is a termite bond, the name of the bonding company is: _____ .

17. **EARNEST MONEY**. Unless otherwise provided in the sales contract, earnest money deposits paid toward the purchase price shall be held by the Firm, in escrow, until the consummation or termination of the transaction. Any earnest money forfeited by reason of the buyer's default under a sales contract shall be divided equally between the Firm and Seller. In no event shall the sum paid to the Firm because of a buyer's default be in excess of the fee that would have been due if the sale had closed as contemplated in the sales contract. In accordance with NC General Statutes Section 93A-12, if a dispute regarding the return or forfeiture of any earnest money deposit arises between Seller and the buyer, the escrow agent holding the deposit may deposit the disputed monies with the appropriate Clerk of Court following written notice to the parties. In the event of any such dispute, Seller directs Firm to disclose Seller's last known mailing address to the escrow agent upon request to enable the escrow agent to comply with the notice requirement of such law.

18. **MEDIATION.** If a dispute arises out of or related to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. If the need for mediation arises, the parties will choose a mutually acceptable mediator and will share the cost of mediation equally.

19. **ADDITIONAL TERMS AND CONDITIONS.** The following additional terms and conditions shall also be a part of this Agreement:

20. **ENTIRE AGREEMENT/CHANGES.** This Agreement constitutes the entire agreement between Seller and Firm and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions, or deletions to this Agreement must be in writing and signed by both Seller and Agent Firm.

21. **DUAL AGENCY.** Seller has received a copy of the "Working With Real Estate Agents" brochure and has reviewed it with Firm. Seller understands that the potential for dual agency will arise if a buyer who has an agency relationship with Firm becomes interested in viewing the Property. Firm may represent more than one party in the same transaction only with the knowledge and informed consent of all parties for whom Firm acts.

(a) Disclosure of Information. In the event Firm serves as a dual agent, Seller agrees that without permission from the party about whom the information pertains, Firm shall not disclose to the other party the following information:
   (1) that a party may agree to a price, terms, or any conditions of sale other than those offered;
   (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
   (3) any information about a party which that party has identified as confidential unless disclosure is otherwise required by statute or rule.

(b) Firm's Role as Dual Agent. If Firm serves as agent for both Seller and a buyer in a transaction involving the Property, Firm shall make every reasonable effort to represent Seller and buyer in a balanced and fair manner. Firm shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and buyer. Seller understands and acknowledges that:
   (1) Prior to the time dual agency occurs, Firm will act as Seller's exclusive agent;
   (2) In its separate representation of Seller and buyer, Firm may obtain information which, if disclosed,

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could harm the bargaining position of the party providing such information to Firm;

(3) Firm is required by law to disclose to Seller and buyer any known or reasonably ascertainable material facts. Seller agrees Firm shall not be liable to Seller for (i) disclosing material facts required by law to be disclosed, and (ii) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

(c) Seller's Role. Should Firm become a dual agent, Seller understands and acknowledges that:

(1) Seller has the responsibility of making Seller's own decisions as to what terms are to be included in any purchase and sale agreement with a buyer client of Firm;

(2) Seller is fully aware of and understands the implications and consequences of Firm's dual agency role as expressed herein to provide balanced and fair representation of Seller and buyer and to encourage and effect communication between them rather than as an advocate or exclusive agent or representative;

(3) Seller has determined that the benefits of dual agency outweigh any disadvantages or adverse consequences;

(4) Seller may seek independent legal counsel to assist Seller with the negotiation and preparation of a purchase and sale agreement or with any matter relating to the transaction which is the subject matter of a purchase and sale agreement.

Should Firm become a dual agent, Seller waives all claims, damages, losses, expenses or liabilities, other than for violations of the North Carolina Real Estate License Law and intentional wrongful acts, arising from Firm's role as a dual agent. Seller shall have a duty to protect Seller's own interests and should read any purchase and sale agreement carefully to ensure that it accurately sets forth the terms which Seller wants included in said agreement.

(d) Authorization *(initial only ONE).*

____ Seller authorizes the Firm to act as a dual agent, representing both the Seller and the buyer, subject to the terms and conditions set forth in Paragraph 21.

____ Seller desires exclusive representation at all times during this agreement and does NOT authorize Firm to act in the capacity of dual agent. *If Seller does not authorize Firm to act as a dual agent, the remainder of this paragraph shall not apply.*

(e) Designated Agent Option *(Initial only if applicable).*

____ Seller hereby authorizes the Firm to designate an individual agent(s) to represent the Seller, to the exclusion of any other individual agents associated with the Firm. The individual designated agent(s) shall represent only the interests of the Seller to the extent permitted by law.

NOTE: When dual agency arises, an individual agent shall not practice designated agency and shall remain a dual agent if the individual agent has actually received confidential information concerning a buyer client of the Firm in connection with the transaction or if designated agency is otherwise prohibited by law.

Seller and Firm each acknowledge receipt of a signed copy of this Agreement.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Seller_____Date_____

Mailing Address

Home Phone Work Phone Cell Phone

Fax Email Address

Firm Prudential Clear Water Realty Phone 252-665-1910

Real Estate Firm Name

Individual agent initials _____ Seller initials _____ _____

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By:_____ Individual agent license # 268019

Individual agent signature

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